HIGHER EDUCATION Brief

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Editor's Note

The purpose of the *Higher Education Brief* is to provide basic information on legal issues related to the law of higher education.

The 1993 issues will deal with central bodies which govern this field of law, i.e. the *Ministère de l'Enseignement supérieur et de la Science*, the *Conseil des Universités,* and federal and provincial granting agencies. Indeed, any institution financed largely by public funds is regulated directly or indirectly by the state. In the case of universities, this is mainly achieved through investment-granting conditions and budgetary rules, prerequisites to operating grants, or the accreditation of new academic programmes.

The following is an analysis of the role and functions of the highest authority in these matters.

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Legal Counsel

THE *MINISTÈRE DE L'ENSEIGNEMENT SUPÉRIEUR ET DE LA SCIENCE*

The *Ministère de l'Enseignement supérieur et de la Science* was created in 1985. It is responsible for postsecondary education, i.e. universities and colleges. Originally, technology was also within its jurisdiction but it was transferred the same year to the *Ministère du Commerce extérieur*.

The *ministre de l'Enseignement supérieur et de la Science* is responsible for the implementation of government policies in the field of education.

· Teaching, research & scientific development

With respect to these matters, the Minister's main function is the formulation of policies which, in particular, contribute to the enhancement of the scientific, cultural and professional skills of the people of Québec and increase access to higher education. The coordination and implementation of all policies and laws related to higher education also come within the Minister's jurisdiction. Thus, the Minister is responsible for the application of the *Act Respecting Educational Institutions at the University Level,* which regulates the use of the word "university" and the issuance degrees certifying of university studies; she is also responsible for the application of the *Universities Investment Act*.

· Organization of the Québec universities network

Since 1989, the Minister may exercise control over the organization of the Québec universities network in accordance with the *Act Respecting Educational Institutions at the University Level.* This Act specifies the educational institutions at the university level in Québec; only those institutions which have been granted the power to award degrees by a law enacted by the Québec Government, another province or by Parliament, and recognized by the Québec Government as being an institution of higher learning, may designate themselves as a "university." Furthermore, an institution not designated as one of higher learning cannot offer a programme or curriculum of university level, or lead the public to believe that the instruction it provides is at the university level.

· Nomination-recommending power

The Minister recommends the nomination of the following: the President of the *Conseil des Universités*; two members of the Council of the *Université Laval* (51 members); eight members of the Council of the *Université de Montréal* (24 members); the President of the *Université du Québec,* and eleven members of its *Assemblée des gouverneurs* (27 members). Upon the request of the Chancellor of the *Université de Sherbrooke*, the Minister may also designate the Chair of its Board of Directors.

As for the Government, it nominates all members of the *Conseil des universités*, and of its *Commission de la recherche universitaire*; all members of the *Conseil de la Science et de la Technologie;* the Director of FCAR (*Fonds pour la formation de chercheurs et l'aide à la recherche)*; two members of the Council of the *Université Laval*; eight members of the Council of the *Université de Montréal*; the President of the *Université*

du Québec, eight members of its *Assemblée des gouverneurs,* and all the rectors and members of the Boards of Directors of its constituencies.

· **Creation of higher learning institutions**

According to the law, the Government may, on such conditions as it determines, authorize the Minister to establish, administer and operate educational institutions at the college or postsecondary level.

It seems that this power does not include the creation of universities. However, the Government of Québec may, by letters patent, or the National Assembly, by Special Act, establish a university. Finally, the Minister may, by letters patent, establish corporations for the advancement of research and technology.

· **Awarding of Grants**

According to the law, the Minister may grant any financial assistance out of the sums put at her disposal on the conditions she may determine and contribute to the development of educational or research institutions. This is achieved through operating grants and capital grants.

a) Operating grants

- First, the total amount of the annual appropriations made available is determined by the Government and the *Conseil du trésor*.
- The Minister adopts budgetary rules prerequisite to these grants and submits them to the *Conseil des Universités* for its opinion; the rules are also communicated to the universities for their reaction.
- The Minister makes her final decision on the rules as well as on the amount of the operating grants allotted to each university.

One of the budgetary rules concerns the accreditation by the Minister of any new academic programme that a university intends to offer in order to obtain the financing of new registrations and (sometimes) a start-up grant. This is accomplished on the advice of the new *Comité du développement et du financement universitaires,* which replaces the former *Comité des programmes* and *Comité du Financement*. However, this committee, in collaboration with the *Commission de la recherche,* evaluates only the appropriateness of a new programme. The latter is decided on the following criteria: a new programme must respond to scientific, socio-economic, cultural or pedagogic needs; it must contribute to the development of the universities network in terms of academic addition or specialization; it must be viable within a five-year period by the enrolment of a sufficient number of students; a financial allocation by the institution for the programme's implementation is also required. As for the evaluation of the quality of a new programme, this matter is the responsibility of the *Commission d'évaluation des nouveaux programmes* of the *Conférence des recteurs et principaux du Québec* (CRÉPUQ).

b) Capital grants

Capital grants are given by the Government to finance the capital expenditures, equipment and library expenses of universities.

- The latter must first submit a five-year investment plan to the Minister.
- The Minister consults the *Conseil des Universités* and any plan must be approved by the Government.
- Once the Government has approved the capital grants or authorized loans, the Minister becomes responsible for their implementation.

· **Conclusion of agreements**

A university cannot conclude any agreement with the Canadian or a foreign government or any of its ministers or agencies without the approval of the Québec Government if the value of the agreement is more than $750,000.

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Very few of the Minister's powers are exercised in isolation. Significantly, they involve the *Conseil des Universités*. The next issue will be devoted to this body.

Source: Andrée Lajoie and Michèle Gamache, *Traité du Droit de l'enseignement supérieur*, Montréal, Les éditions Thémis, 1990, 643 pages.

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